

Message Text

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14-11

ORIGIN EB-07

INFO OCT-01 ARA-06 ISO-00 CIAE-00 COME-00 DODE-00 DOTE-00

FMC-01 INR-07 NSAE-00 CG-00 OFA-01 DLOS-04 L-03 TAR-01

AID-05 IGA-01 TRSE-00 SP-02 /039 R

DRAFTED BY EB/TT/MA:JPSTEINMETZ:BST

APPROVED BY EB/TT/MA:RKBANK

ARA/CAR:DSTRASSER

ARA/ECP:SFOUTS (INFO)

FMC:WJSMITH (INFO)

MARAD:RBOURDON (INFO)

COMMERCE/IEPR:EANTOUN (INFO)

DOT:PLARSEN (INFO)

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R 250000Z JUN 75

FM SECSTATE WASHDC

TO AMEMBASSY SANTO DOMINGO

LIMITED OFFICIAL USE STATE 148858

E.O. 11652: N/A

TAGS:EWWT, DR, US

SUBJECT:DR MARITIME LEGISLATION

REF: A) SANTO DOMINGO 2743; B) STATE 138606

C) SANTO DOMINGO 2525

1. EMBASSY COMMENDED ON INITIAL EFFORTS REPORTED REF A.

2. DEPARTMENT WOULD APPRECIATE EMBASSY CLARIFICATION OR ASSISTANCE ON FOLLOWING:

A) IS MARITIME LAW ALREADY IN FORCE PER SELIMAN COMMENT
PARA 3, REF A, OR IS EMBASSY UNDERSTANDING PARA 1, REF C,
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THAT LAW ONLY BECOMES EFFECTIVE UPON PUBLICATION IN THE
OFFICIAL GAZETTE CORRECT? IF LATTER TRUE, WHAT IS THE
STATUS RE PUBLICATION? IS PREPARATION OF IMPLEMENTING
REGULATIONS UNDERWAY AND DOES GODR EXPECT TO MEET TWO MONTH

DEADLINE (ARTICLE 19 OF DRAFT LEGISLATION SENT SD A-011 OF FEBRUARY 6, 1975) FOLLOWING PUBLICATION OF LAW? ON OTHER HAND, IS THERE ANY TRUTH TO D'ALLESANDRO STATEMENT PARA 2, REF A, THAT MEASURE BEING REFINED BY GODR INTER-AGENCY COMMITTEE?

B) ARTICLE 4 OF SAME DRAFT SETS FORTH PERCENTAGES OF VARIOUS CATEGORIES OF CARGOES RESERVED FOR NATIONAL SHIPS. IN ORDER TO ASSESS MAGNITUDE OF IMPACT THEREOF, CAN EMBASSY PROVIDE 1973, 1974 AND ANY AVAILABLE 1975 DR-US TRADE DATA (BOTH TONNAGE AND DOLLAR VALUE) ON:

- (I) TOTAL DR IMPORTS FROM AND EXPORTS TO THE U.S.;
- (II) TOTAL DR IMPORTS FROM U.S. BENEFITTING FROM TAX AND DUTY EXONERATIONS;
- (III) TOTAL IMPORTS OF DR STATE ENTITIES AND ENTERPRISES FROM U.S.;
- (IV) TOTAL EXPORTS OF DR STATE ENTERPRISES TO U.S.

IF REQUESTED DATA NOT READILY AVAILABLE, YOUR BEST ESTIMATES ON (II), (III), AND (IV) ABOVE WILL BE APPRECIATED.

C) EMBASSY IS ALSO REQUESTED TO FORWARD COPY OF MARITIME LAW AS SIGNED BY PRESIDENT FOR ATTENTION OF EB/TT/MA.

3. FORMER FINANCE SECRETARY SELIMAN'S COMMENTS REGARDING U.S. PRACTICES, ETC., REPORTED PARA 4, REF A, ARE EITHER ERRONEOUS OR MISLEADING (SEE BELOW) AND EMBASSY SHOULD SEEK TO COUNTER SUCH MISCONSTRUCTIONS IN ANY FUTURE DISCUSSIONS WITH GODR OFFICIALS.

A) FEDERAL MARITIME COMMISSION (FMC) DOES NOT, RPT NOT, FIX FREIGHT RATES. SECTION 18(B), SHIPPING ACT, 1916, INTER ALIA, REQUIRES EVERY COMMON CARRIER BY WATER AND EVERY CONFERENCE OF CARRIERS IN THE U.S. FOREIGN TRADE TO FILE TARIFFS SHOWING RATES WITH THE FMC. RATE LIMITED OFFICIAL USE
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CHANGES MUST ALSO BE FILED AND CAN BE EFFECTED ONLY AFTER 30 DAYS THEREOF. FMC CAN DISAPPROVE ANY RATE WHICH, AFTER HEARING, IT FINDS TO BE SO UNREASONABLY HIGH OR LOW AS TO BE DETRIMENTAL TO THE COMMERCE OF THE UNITED STATES.

B) CONFERENCE MEMBERSHIP IS NOT A PREREQUISITE FOR SERVING U.S. FOREIGN COMMERCE AND A CARRIER MAY APPLY TO JOIN ONE OR NOT AS IT SEES FIT. MOREOVER, CONFERENCES OPERATING IN THE U.S. FOREIGN TRADE ARE "OPEN" AS OPPOSED TO THE "CLOSED" CONFERENCES IN EXISTENCE ELSEWHERE, I.E. EUROPE, WHERE MEMBERSHIP AND ENTRY THERETO

IS RESTRICTED. SECTION 15, SHIPPING ACT, 1916 DOES NOT PERMIT CONFERENCE AGREEMENTS WHICH FAIL TO PROVIDE REASONABLE AND EQUAL TERMS AND CONDITIONS FOR ADMISSION AND READMISSION TO CONFERENCE MEMBERSHIP OF OTHER QUALIFIED CARRIERS IN THE TRADE. QUALIFIED CARRIER IS INTERPRETED TO BE ONE THAT IS ABLE TO PROVIDE SERVICE ON REGULAR BASIS.

C) SELIMAN'S CLAIM OF DOMINICAN RIGHT TO 50 PERCENT OF SHIPPING INVOLVING DR REPRESENTS PRINCIPLE THAT HAS NOT BEEN RECOGNIZED OR SANCTIONED INTERNATIONALLY. THERE ARE SEVERAL INSTANCES, HOWEVER, WHERE COUNTRIES, BOTH UNILATERALLY AND BILATERALLY, HAVE APPLIED THE PRINCIPLE TO ALL OR PARTS OF THEIR RESPECTIVE TRADES. USG OPPOSES CONCEPT NOT ONLY AS EXCESSIVE BUT ALSO FOR REASONS SET FORTH IN MARITIME POLICY STATEMENT SENT WITH REF B. EVEN UNIMPLEMENTED UN CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES (SEE STATE A-5007 OF JUNE 19, 1974, FOR BACKGROUND AND U.S. POSITION THEREON) SPEAKS ONLY OF LINES OF TRADING PARTNERS HAVING EQUAL RIGHTS TO PARTICIPATE IN THE FREIGHT AND VOLUME OF TRAFFIC IN THEIR MUTUAL FOREIGN TRADE. AT SAME TIME, CONVENTION STATES THIRD FLAGS HAVE RIGHT TO SIGNIFICANT PART, SUCH AS 20 PERCENT. FOREGOING IS INTERPRETED TO MANDATE 40/40/20 CARGO SHARING FORMULA AND WOULD APPLY TO ALL CARGOES TRANSPORTED BY CONFERENCE MEMBERS UNLESS OTHERWISE MUTUALLY AGREED, WITH THE EXCEPTION OF ONLY MILITARY EQUIPMENT CARGOES USED FOR NATIONAL DEFENSE PURPOSES. KISSINGER
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